

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by New York Telephone)
Company (d/b/a Bell Atlantic –)
New York), Bell Atlantic)
Communications, Inc., NYNEX Long)
Distance Company, and Bell Atlantic)
Global Networks, Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in New York)

CC Docket No. 99-295

REPLY COMMENTS OF BELL ATLANTIC IN SUPPORT OF APPLICATION BY
BELL ATLANTIC – NEW YORK FOR AUTHORIZATION TO PROVIDE IN-REGION,
INTERLATA SERVICES IN NEW YORK

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY.....	1
I. BELL ATLANTIC SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN NEW YORK.....	4
A. Unbundled Local Loops.....	5
B. Other Checklist and OSS Issues.....	20
1. Interconnection	21
2. Unbundled Network Elements.....	25
3. Number Portability.....	29
4. Reciprocal Compensation	29
5. Resale.....	30
6. Operations Support Systems.....	31
II. BELL ATLANTIC IS FULLY IN COMPLIANCE WITH SECTION 272.....	41
A. Bell Atlantic's National Directory Assistance Service Provides No Reason To Deny Its Application	42
B. Bell Atlantic Will Comply with the "Operate Independently" Requirement of Section 272(b)(1)	43
C. Bell Atlantic Will Comply with the Disclosure Requirements of Section 272(b)(5).	44
D. Bell Atlantic Will Comply with the Non-Discrimination Requirements of Section 271(c)(1)	44
E. AT&T's Arguments Concerning Joint Marketing Are Meritless.....	46

III.	APPROVING BELL ATLANTIC'S APPLICATION IS IN THE PUBLIC INTEREST	47
A.	Local Competition in New York Is Thriving.....	47
B.	Local Markets in New York Will Remain Open After Bell Atlantic Obtains Section 271 Approval	50
1.	Bell Atlantic's Prices for Network Elements Are Fully Consistent with This Commission's Rules	51
2.	Bell Atlantic's Reporting Mechanisms Are More Than Adequate.....	56
C.	Permitting Bell Atlantic To Provide InterLATA Service in New York Will Vastly Enhance Consumer Welfare	60
	CONCLUSION.....	65
	GLOSSARY OF TERMS.....	66

ATTACHMENTS

- Attachment A: CLECs Are Adding Residence Lines Faster Than Bell Atlantic Retail
- Attachment B: Local Competition in New York
- Attachment C: Pricing Competition for Residence Customers

APPENDICES

Appendix A: Declarations (and Accompanying Exhibits)

- Volume 1: (Tab 1) Joint Reply Declaration of Paul A. Lacouture and Arthur J. Troy
(Competitive Checklist)
- (Tab 2) Joint Reply Declaration of Stuart Miller, Marion C. Jordan, and
Arthur S. Zanfini
(Operations Support Systems)
- Volume 2: (Tab 3) Joint Reply Declaration of George S. Dowell and Julie A. Canny
(Performance Measurements)
- (Tab 4) Joint Reply Declaration of Robert H. Gertner and Gustavo E.
Bamberger
(Performance Measurements)

Volume 3: (Tab 5) Reply Declaration of Susan C. Browning
(Section 272 Compliance)

Volume 4: (Tab 6) Reply Declaration of William E. Taylor
(InterLATA and Local Competition)

(Tab 7) Reply Declaration of Paul W. MacAvoy
(InterLATA Competition)

(Tab 8) Reply Declaration of Gregory M. Duncan
(Performance Assurance Plan)

Appendix B: Hot-Cut Records Submitted for New York Public Service Commission
Reconciliation

INTRODUCTION AND SUMMARY

The New York Public Service Commission has verified unequivocally that Bell Atlantic-New York “has met the requirements of §271(c) of the Telecommunications Act of 1996.” PSC Eval. at 1. Based on a “painstaking analysis” by a “team of telecommunications engineers, financial analysts, economists, accountants, and attorneys” that “took more than two years, included thousands of hours of discussions with Bell Atlantic-NY competitors and with interested government agencies and took into account all aspects of each issue,” the New York PSC has concluded “that party and staff concerns have been adequately addressed and that *the Checklist is being met.*” Id. at 2, 3 (emphasis added, footnote omitted).

Likewise, based upon its own exhaustive review and the 15-month-long test conducted by independent auditor KPMG, the New York PSC expressly found that Bell Atlantic “is providing access to OSS in compliance with [the] Checklist,” and that its systems are capable of handling current and expected future demand. Id. at 7. According to the PSC, the KPMG test of Bell Atlantic’s “OSS interfaces, documentation, and processes . . . demonstrates Bell Atlantic-NY’s ability to handle a broad array of resale, unbundled network elements, unbundled network element platform and combination orders *at reasonably foreseeable volumes* in a nondiscriminatory manner.” Id. at 34 (emphasis added).

The Department of Justice also has agreed with virtually all of the New York PSC’s conclusions. The Department gives Bell Atlantic a clean bill of health with respect to two of the three entry paths specified by the 1996 Act — facilities-based competition and resale.¹ With

¹See DoJ Eval. at 10 (“[W]e have no substantial concerns about the ability of facilities-based carriers to enter the market.”); id. at 12 (“[T]he Department does not believe that there are performance deficiencies that are significantly impeding entry by resellers.”).

respect to the third entry path — unbundled elements — the Department expresses only two limited concerns.

First, the Department raises concerns that affect about 1 percent of the unbundled loops that Bell Atlantic provides each month in New York. Second, the Department claims that Bell Atlantic's systems cannot automatically flow through enough orders for unbundled element platforms to handle future demand, even though it concedes that Bell Atlantic is satisfactorily handling current demand. And that demand already is large. In just the last several months, competitors have added nearly a quarter of a million predominantly residential lines using the platform.

Although the Department suggests that, because of these concerns, Bell Atlantic's application may be impatient or premature, this is simply not so. By mid-1997, Bell Atlantic believed that it had satisfied the Checklist. Nonetheless, in response to concerns by the New York PSC and the Department, Bell Atlantic in April 1998 submitted its ground-breaking "Pre-Filing Statement," setting out comprehensively additional steps to be taken. In response, the Department agreed that, once those steps were taken, it would support Bell Atlantic's application.² Now, a year and one-half later, Bell Atlantic has completed each and every step it committed to take, and more.³ By suggesting that Bell Atlantic wait just a little longer, or do just

²See Letter from Joel I. Klein, U.S. Department of Justice, to John O'Mara, Chairman, New York Public Service Commission, at 1, 2 (Apr. 6, 1998) ("[T]he Department of Justice has announced that it will support applications under Section 271 based on a showing that the local telecommunications markets in a state are fully and irreversibly open to competition. . . . [I]t is our view that the Pre-Filing Statement filed by Bell Atlantic-New York, if fully and properly implemented, should support a conclusion that the New York local telephone market is 'fully and irreversibly open to competition.'").

³See PSC Eval. at 48 (BA-NY provides "integratable" pre-ordering and ordering interfaces); KPMG, Bell Atlantic OSS Evaluation Project, Final Report, Aug. 6, 1999, at POP6 IV147 ("KPMG Report") (App. C, Tab 916) (BA-NY meets flow-through commitments); Cases 98-C-0690 & 95-C-0657, Opinion No. 98-18, PSC, Opinion and Order Concerning Methods for

a little more, the Department, despite its protestations to the contrary, would move the goal posts yet again.

This Application should be granted now. With the exception of its two narrow issues, the Department acknowledges that Bell Atlantic has completed “all . . . of the actions needed to achieve a fully and irreversibly open market in New York.” DoJ Eval. at 1. The Department also admits that, with respect to its remaining concerns, it did not review a complete record of Bell Atlantic’s actual performance. And it expressly recognizes that “the Commission may obtain information not currently available to the Department that would support” a conclusion that Bell Atlantic has satisfied its concerns, and that information from reply comments may “justify a conclusion by the Commission different from that reached by the Department.” *Id.* at 28, 41.

These reply comments make that showing. First, the Department’s concerns generally rely on inaccurate and misleading data presented by Bell Atlantic’s opponents. Moreover, the Department fails to consider these concerns in the context of Bell Atlantic’s overall performance, which is excellent.

The New York PSC has looked at these same issues based upon a full record amassed over more than two and one-half years. And the PSC’s conclusion from its years of painstaking effort is as emphatic as it is obviously correct: “based on the record as a whole,” “the Checklist is being met.” PSC Eval. at 3, 15.

Network Element Recombination, at 11-12, 39, Nov. 23, 1998 (App. D, Tab 121) (Bell Atlantic provides unbundled elements in a manner that permits CLECs to combine, and makes the platform available consistent with the Pre-Filing Statement); Cases 98-C-0690 *et al.*, PSC, Order Suspending Tariffing Amendments and Directing Revisions, at 5, 9, 15, Jan. 11, 1999 (App. D, Tab 129) (platform and interconnection offerings will meet requirements of Pre-Filing Statement); Cases 98-C-0690 *et al.*, PSC, Order Directing Tariff Revisions, at 12-13, Mar. 24, 1999 (App. D, Tab 156) (EEL offering will meet requirements of Pre-Filing Statement).

**I. BELL ATLANTIC SATISFIES ALL REQUIREMENTS OF THE
COMPETITIVE CHECKLIST IN NEW YORK.**

The Commission has emphasized that, because it has only 90 days to grant or deny long distance applications, it will rely on the state commission in the affected State to build a factual record and undertake a detailed analysis of Checklist compliance. Indeed, under the terms of the Act, the Commission is expressly directed to consult with the state commission, whose specific statutorily prescribed role is "to verify the compliance of the Bell operating company with the requirements of subsection (c)," including its compliance with the Competitive Checklist.

47 U.S.C. § 271(d)(2)(B). The Commission has repeatedly made clear that, where the state commission has made factual determinations of Checklist compliance that are based on a detailed and extensive record, it will accord those determinations great weight in evaluating a Bell company's long distance application under section 271.⁴

⁴See, e.g., Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶ 9 (1998) ("First Louisiana Order") (Commission will "determine the amount of deference to accord to the state commission's consultation, in light of the nature and extent of the state commission's proceedings on the applicant's compliance with section 271 and the status of local competition"); id. ("the Commission will consider carefully state determinations of fact that are supported by a detailed and extensive record"); Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 29 (1997) ("South Carolina Order") (same); Remarks of FCC Commissioner Susan Ness Before the Florida Communications Policy Symposium Tallahassee, 1999 FCC LEXIS 539, at *7 (Feb. 17, 1999) ("State commission findings of fact and a thorough hearing record are invaluable to us, especially because we have only ninety days in which to review the application and render a decision."); Remarks of Chairman Reed Hundt Before the Competition Policy Institute, 1997 FCC LEXIS 262, at *16-*17 (Jan. 14, 1997) ("Last July, we at the FCC hosted a meeting with state commissioners to stress the importance of their role in this Section 271 process. We emphasized that the states' knowledge of local conditions and experience in resolving factual disputes enabled the states to play the critical role of fact-finder. . . . The states would make findings of fact based on an adversary process trying disputed issues related to the opening of the relevant BOC's local network, and then we could rely on these findings of fact.").

The New York PSC has done precisely that, subjecting Bell Atlantic's wholesale efforts to two and one-half years of "painstaking" review. The PSC reached its conclusions based upon an extensive and highly detailed record that focused specifically on Bell Atlantic's compliance with the Checklist, and that included literally tens of thousands of pages of evidence, 19 days of formal hearings, and testimony from scores of witnesses testifying under oath and subject to cross-examination. During the course of that proceeding, the PSC exhaustively "examined every detail of Bell Atlantic-NY's wholesale service to CLECs," and devoted "concentrated and prolonged attention" to the unbundled loop and other issues raised here. PSC Eval. at 3, 97. And, based on that detailed and comprehensive record, the PSC determined that, in New York today, the "Checklist is being met." Id. at 3, 15.

A. Unbundled Local Loops.

After devoting "concentrated and prolonged attention" to Bell Atlantic's provision of unbundled loops, the New York PSC has concluded "that the issues affecting competition have been resolved and on-time performance has been demonstrated." Id. at 97, 99. The PSC found in particular that "[t]he quality of Bell Atlantic-NY's hot cut performance is . . . satisfactory, with a trouble report rate of less than 2%, for August 1999." Id. at 97-98. The PSC also noted that "Bell Atlantic-NY has put in place the procedures and training" to "maximize" the provision of unbundled loops to competitors and "minimize" the occurrence of problems that had been the source of past concerns. Id. at 99.

Bell Atlantic has provided competitors with massive and rapidly increasing quantities of unbundled loops, and has done so on time in the intervals that competitors request. As of August 1999, Bell Atlantic had provided nearly 200,000 loops, including more than 150,000 provided as part of platforms. See Application at 16. In July and August, when loop and platform orders reached what was at that time an all-time high, Bell Atlantic completed more than 99 percent of

new orders on time. See id. at 17-18. Bell Atlantic repeated this performance in September, providing more than 58,000 additional loops (including 53,000 as part of platforms), and completing more than 99 percent of those orders on time. See Lacouture/Troy Rep. Decl. ¶ 34.

Hot Cuts. The Department does not even question Bell Atlantic's overall performance in providing unbundled loops on time; this record is unassailable. The Department instead focuses on a small subset of loops that are provisioned using a hot-cut procedure. See id. ¶ 36. In the Department's own words, however, the unbundled element platform "is likely to be the principal vehicle, at least in the short term, for competitors offering mass market services to residential and small business customers," DoJ Eval. at 28, and so it is unlikely that hot-cut orders will increase significantly in the future as the Department suggests.⁵ In any event, the Department's and other opponents' claims regarding Bell Atlantic's hot-cut performance are unfounded.

First, the Department and AT&T claim that, during July and August, Bell Atlantic provisioned only 80 percent of AT&T's hot-cut orders on time. See id. at 18-19; AT&T at 33. But this claim is based on data that AT&T presented to the PSC, and which the PSC found to be

⁵The Department's suggestion that hot-cut orders will increase significantly in the future is pure conjecture, without even a citation to any record evidence. In fact, the Department's speculation is contradicted by AT&T and MCI WorldCom, both of whom have stated that hot cuts would be used to serve mass-market residential and business customers, if at all, *only* in the absence of the platform option. See, e.g., Comments of MCI WorldCom, Inc., at 53, CC Docket No. 96-98 (FCC filed May 26, 1999) ("MCI WorldCom cannot currently offer mass market services throughout the country because it has been deprived access to the platform"); id. at 52 (connecting ILEC loops to a CLEC switch has "cost disadvantages" compared to the platform); Comments of AT&T Corp. on Second Further Notice of Proposed Rulemaking at 89, CC Docket No. 96-98 (FCC filed May 26, 1999) ("switch-based entry is not an economically viable means to compete for most new customers, especially residential and smaller business customers"); id. at 92 ("if unbundled switching and the UNE-P combination were available, CLECs could begin competing for a large portion of all customers immediately"). Speculation about a rapid increase in hot cuts also is undercut by AT&T's assertion that it intends to serve local customers primarily through its cable and wireless networks — "by investing in facilities to provide advanced, end-to-end communications services directly to our customers, without relying on the networks of other companies." AT&T, SEC Form 10-K/A, Amendment No. 2 (SEC filed July 12, 1999).

less reliable than Bell Atlantic's own data. When the PSC reconciled Bell Atlantic's and AT&T's data for July, it confirmed that Bell Atlantic's overall on-time performance was 91 percent. See Lacouture/Troy Rep. Decl. ¶ 49. In short, Bell Atlantic's performance proved to be excellent, and its data reliable, despite AT&T's supposed "evidence" to the contrary. The PSC is now reconciling Bell Atlantic's and AT&T's data for August. See id. ¶ 50.⁶

Second, the Department has its facts wrong when it claims that the PSC's findings "overstate" Bell Atlantic's performance by defining "on time" orders to include those that were rescheduled due to Bell Atlantic's fault. See DoJ Eval. at 18-19.⁷ In fact, Bell Atlantic's performance numbers *do* take account of Bell Atlantic-caused delays. See Dowell/Canny Decl. ¶ 68.

Third, the Department claims that Bell Atlantic has had problems in providing timely and accurate confirmations and rejections of hot-cut orders. See DoJ Eval. at 15-16. But Bell Atlantic's overall performance here has been extremely strong. The New York PSC indeed confirmed that, "[o]verall, Bell Atlantic-NY's performance in providing confirmations and rejects in a timely and accurate manner enables mass market entry by competitors." PSC Eval. at 44. As demonstrated in the Application, in the first seven months of 1999, Bell Atlantic bettered the intervals set by the New York PSC for returning confirmation notices and rejection notices. See Application at 40-41.

⁶Bell Atlantic's data also show that it is timely providing hot cuts to other carriers, including Choice One and Allegiance. See Lacouture/Troy Rep. Decl. ¶¶ 40-43.

⁷AT&T's claim that KPMG did not find CLECs responsible for 89 percent of hot-cut orders that were postponed past their due date is simply wrong. KPMG confirmed this in its Final Report, effectively correcting an error in earlier testimony (upon which AT&T relies). See Lacouture/Troy Rep. Decl. ¶ 52.

Bell Atlantic's performance in returning confirmations and rejects specifically for unbundled loops and platform orders has also been solid. On average, during both August and September, Bell Atlantic timely returned confirmations and reject notices for such orders nearly 94 percent of the time. See Miller/Jordan/Zanfini Rep. Decl. ¶ 43. Though Bell Atlantic's performance has been slightly lower for a few subcategories with small transaction volumes, the PSC found that, "[f]or high volume transactions, Bell Atlantic-NY's performance is at or near the targets." PSC Eval. at 43.

The Department also is simply mistaken when it says that as many as 30 to 40 percent of confirmations are inaccurate. See DoJ Eval. at 16. The Department refers to a statement made *before* numerous fixes were implemented in Bell Atlantic's systems; in the wake of these fixes, Bell Atlantic has provided accurate confirmations. See Dowell/Canny Rep. Decl. ¶¶ 34-35. As a result, the PSC found that Bell Atlantic is providing order confirmations in an "accurate manner." PSC Eval. at 44.

The Department attributes late and inaccurate order confirmations to "a high degree of manual processing of hot-cut orders at the ordering stage." DoJ Eval. at 17. But this overlooks the fact that many hot-cut orders must be processed manually due to CLECs' own actions. For example, AT&T — which accounts for a significant percentage of the manually processed hot cuts — submits several orders per hot cut in order to modify, correct, or supplement its initial orders. See Miller/Jordan/Zanfini Rep. Decl. ¶ 44. When a CLEC submits so many orders for the same hot cut, Bell Atlantic must process the hot cut manually in order to ensure that the many different orders are properly reconciled. See id.

Fourth, the Department (again relying on AT&T's biased data) claims that Bell Atlantic drops or delays customer directory listings while performing hot cuts. See DoJ Eval. at 19;

AT&T at 42-44. But directory listings issues for the subset of transactions that involve hot cuts already have been subjected to an extensive quality-review process under the supervision of the New York PSC that caught each of the listings about which AT&T complains for the most recent period. See Lacouture/Troy Rep. Decl. ¶¶ 155-157. Moreover, the PSC Staff will continue to monitor this issue and Bell Atlantic's handling of it. Accordingly, the PSC has said that it is "satisfied that the software modifications, the strengthened quality assurance team, and ongoing Staff oversight, ensure that Bell Atlantic-NY performance complies with the requirements of this Checklist item." PSC Eval. at 121-22. In addition, Bell Atlantic gives competing carriers the ability to check their directory listings themselves, so that any errors can be corrected co-operatively, and many CLECs (though not AT&T) are doing precisely that. See Lacouture/Troy Rep. Decl. ¶ 158.

In addition to the concerns raised by the Department, AT&T makes two additional claims, neither of which withstands scrutiny. First, AT&T claims that Bell Atlantic's hot-cut process is responsible for service outages. See AT&T at 32-33. But "[a]n investigation by NYDPS Staff did not yield evidence of widespread outages resulting from the hot cut process; indeed, many of the service disruptions reported by competitors were no greater than inconveniences such as static on the line, and were no more and no different from the disruptions Bell Atlantic-NY retail customers experienced." PSC Eval. at 90. Even AT&T's supposed evidence on this score confirms that Bell Atlantic has performed 90 percent of hot cuts without incident. See AT&T at 32-33.⁸

⁸AT&T claims (at 37 n.8) that the PSC's central hot-cut performance metric (PR-4-06) is misleading because it does not take into account service disruptions, and that as a result even the PSC has not fully embraced it. See AT&T at 37-38. This is not true. Although the PSC agreed to "consider several adjustments to the measurement process," PSC Eval. at 90, it has continued to express confidence in the metric in reconciliation proceedings, and it has confirmed that the

Second, AT&T claims that Bell Atlantic is not following all required hot-cut procedures. See AT&T at 34-37. But both the PSC and KPMG have concluded otherwise. See PSC Eval. at 89; KPMG Report POP5 IV118 (Test Cross Reference P5-21), POP12 IV285-296 (Table IV12.6; Test Cross Reference P12-3) (App. C, Tab 916). In particular, Bell Atlantic is following the “due date minus two” (“DD-2”) procedures requiring it to check for CLEC dial tone two days before a due date and to give the CLEC ample time to correct any problems. See Lacouture/Troy Rep. Decl. ¶¶ 60, 62. In reconciling Bell Atlantic’s and AT&T’s hot-cut data, the PSC considered the failure to perform a DD-2 check a “miss” if Bell Atlantic did not give the CLEC ample time to correct the problem and the hot cut had to be postponed. See id. ¶ 62. The PSC’s determination that Bell Atlantic had provided 91 percent of hot cuts on time thereby confirms that Bell Atlantic is following the hot-cut process. See id. ¶ 49.⁹

Bell Atlantic is also contacting CLECs one hour before a scheduled hot cut in order to get final authorization to proceed. See AT&T at 34-35. KPMG in fact examined Bell Atlantic’s performance on this process and found that Bell Atlantic timely made the authorization call 90 percent of the time. See KPMG Report POP12 IV291 (App. C, Tab 916); Lacouture/Troy Rep. Decl. ¶ 64. Moreover, AT&T’s own operations personnel have confirmed to Bell Atlantic and AT&T’s senior management that there is no issue surrounding these calls. See id.

Finally, for hot cuts that will be performed on customers served by IDLC — which involves less than 1 percent of all hot cuts — Bell Atlantic begins checking for alternative

alleged basis for CLEC dissatisfaction with this measure — service outages — is not in fact a widespread problem, see id.

⁹In its Amended Performance Assurance Plan, Bell Atlantic committed to modify its performance reporting to account for Bell Atlantic’s performance of DD-2 checks. See Petition for Approval of the Amended Performance Assurance Plan and Amended Change Control Assurance Plan for Bell Atlantic-New York, at 5, Cases 97-C-0271 & 99-C-0949 (PSC filed Sept. 24, 1999) (App. I, Tab 24); PSC Eval. at 88-89.

facilities as soon as the service order is accepted and pre-installs those facilities the day before the scheduled hot cut to make sure they work. See id. ¶ 67. The PSC's Evaluation confirms that Bell Atlantic's modified hot-cut procedures address AT&T's allegations. See PSC Eval. at 92.

DSL Loops. The Department's other area of concern involves unbundled loops used to provide DSL services, also a tiny fraction of the total number of unbundled loops provided in New York. And, even though there were problems provisioning DSL service during the first months in which this new and complex service was deployed, competitors still managed to deploy several times more DSL lines than Bell Atlantic, see Lacouture/Troy Rep. Decl. ¶ 73, and, as described below, consistently received service that was at least as good as the service Bell Atlantic provided to itself. While demand for DSL loops is likely to increase, Bell Atlantic has taken or is in the process of taking numerous steps to satisfy this demand, and any evaluation of Bell Atlantic's performance in this area must therefore account for Bell Atlantic's newly implemented capabilities.¹⁰

Although the Department does not base its concerns on any identified standard, parity, not perfection, is the standard for measuring Bell Atlantic's performance in providing DSL loops to competitors, and Bell Atlantic has met this standard.¹¹ As stated in its Application, Bell Atlantic had provided approximately 520 ADSL-specific unbundled loops through August 1999,

¹⁰See also Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20,599, ¶ 57 (1998) ("Second Louisiana Order") ("We will also look favorably on BOC measures designed to correct problems promptly and to prevent similar problems in the future.").

¹¹See, e.g., Letter from William E. Kennard, Chairman, FCC, to Sen. John McCain and Sen. Sam Brownback, at 2 (Mar. 20, 1998) ("Nondiscriminatory access requires BOCs to show that 'parity' has been achieved, not 'perfection'"). There is, of course, a threshold question as to whether DSL services fall within the class of services to which the Act's unbundling obligations apply. That issue is being addressed in a separate proceeding. See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order,

and provided those loops within the same average interval as Bell Atlantic's own ADSL service. See Application at 20. In September, Bell Atlantic missed appointments for only 3.22 percent of the 653 ADSL loops it provided. See Dowell/Canny Rep. Decl. at Att. E. During August and September, Bell Atlantic took an average of 7.5 days to install a CLEC's ADSL loop, nearly identical to the 7.4 days Bell Atlantic required to provide its own DSL service. See Lacouture/Troy Rep. Decl. ¶ 73. And this is true even though the operational procedures and coordination required to provide an unbundled loop for a competing DSL provider are significantly more complex than for Bell Atlantic's own service.

Citing the complaints of NorthPoint and Covad, the Department expresses concern that these performance measures do not sufficiently address complaints that many of the loops Bell Atlantic provided were defective. See DoJ Eval. at 27. The Department nevertheless recognizes that Bell Atlantic recently implemented new procedures to address such problems, and that operating results from those new procedures might satisfy its concerns. See id.

Bell Atlantic's latest performance data prove conclusively that these new procedures are working. From the time the new procedures were implemented through October 15th, Bell Atlantic has provisioned 824 DSL loops, and has received only 21 repair orders for those loops — a 97 percent success rate. See Lacouture/Troy Rep. Decl. ¶ 82. The PSC has likewise

and Notice of Proposed Rulemaking, 13 FCC Rcd 24,011, ¶¶ 92-115 (1998). Whatever the result there, however, it is unquestionably true that these new services were not contemplated by Congress at the time of the 1996 Act, and have little if anything to do with the well-recognized congressional policy behind section 271. See, e.g., BellSouth Corp. v. FCC, 162 F.3d 678, 689-90 (D.C. Cir. 1998) ("Congress required the BOCs to open their local markets to competition before allowing them to enter the long distance market in-region, because, due to the unique infrastructure controlled by the BOCs, they could exercise market power."). By no stretch of the imagination does Bell Atlantic have market power in the broadband access market. Quite the contrary, that market today is dominated by the cable incumbents, which account for roughly 90 percent of all broadband access subscribers in New York. See infra, p.13 n.13.

validated Bell Atlantic's new procedures, stating that "[p]reliminary results indicate that where the cooperative testing is done, installation problems are reduced." PSC Eval. at 94.

And there is every indication that this performance will continue, given that the DSL loop provisioning process will, in the PSC's words, be "closely monitored and evaluated" by a collaborative group that includes the PSC and CLECs that provide DSL services. Id.¹² Moreover, Bell Atlantic has unique incentives to improve its performance in providing DSL loops. For one thing, the principal competition for high-speed data services is cable modems, which currently have a virtual lock on the high-speed data market.¹³ As a result, Bell Atlantic has a strong incentive to provide superior wholesale service to CLECs and others in order to keep this traffic from leaving its network altogether in favor of competing cable networks. See Lacouture/Troy Rep. Decl. ¶ 74. For another thing, Bell Atlantic today pays hundreds of millions of dollars in so-called "reciprocal compensation" on one-way calls to the Internet. It pays that money, however, only on switched connections to the Internet, not dedicated connections such as DSL. As a result, for every customer that signs up for a competitor's DSL service, Bell Atlantic will no longer have to pay large reciprocal compensation fees for that customer's Internet usage. See id.

Bell Atlantic also meets the parity standard for providing loop qualification information to competitors. Although the Department acknowledges that ongoing proceedings before the

¹²Based on feedback from this process, Bell Atlantic already has made several significant adjustments, and Bell Atlantic, the New York PSC, and CLECs are working to establish new performance metrics for DSL that will be "subject to the PSC Performance Assurance Plan and given additional weight as critical measures." PSC Eval. at 95.

¹³There are approximately 68,000 cable modem subscribers in New York, more than 10 times the number of DSL subscribers. See NCTA, Cable Television Developments 12 (Summer 1999) (6.5 million homes passed by cable in New York; 4.7 million cable subscribers); FCC, Broadband Today, Oct. 1999, at 25 (cable modem service available to 30 percent of all cable homes; penetration rate for cable modem service is 3.5 percent); Lacouture/Troy Rep. Decl. ¶ 73.

PSC “will soon resolve many of the disputed issues,” DoJ Eval. at 26, it fails to mention that in these collaborative proceedings CLECs already have “agree[d] that *all the information required is available*,” PSC Eval. at 93 (emphasis added). And, on November 2, 1999, CLECs (including MCI WorldCom) reiterated that view in the ongoing collaborative proceedings before the PSC. See Lacouture/Troy Rep. Decl. ¶ 102. Indeed, within the next two months, 93 percent of Bell Atlantic’s central offices with completed or pending collocation — which account for about 90 percent of Bell Atlantic’s lines — will be included in the database. See id. ¶ 75.¹⁴

The principal complaint that data CLECs still have appears to be over the price they must pay for access to loop qualification information. These rates are set forth in Bell Atlantic’s tariff, and are now under review by the New York PSC. See infra, pp. 54-55. Bell Atlantic submitted extensive cost studies to justify its rates, which were set based on Bell Atlantic’s costs. See id. If the PSC finds that these cost studies do not support Bell Atlantic’s rates, it can order Bell Atlantic to modify its rates and provide refunds. See id.

In any event, Bell Atlantic already provides information to CLECs that it does not even provide to its own retail representatives, and is under no legal obligation to provide at all.¹⁵ For example, Bell Atlantic provides competitors information regarding the length of loops longer than 15,000 feet that do not have load coils, even though Bell Atlantic’s sales representatives do not get this information. See Lacouture/Troy Rep. Decl. ¶ 100.¹⁶ Although certain competitors

¹⁴NorthPoint (at 10) also claims that Bell Atlantic’s database often rejects queries on addresses that have been validated by Bell Atlantic’s pre-ordering systems. Bell Atlantic has, however, encouraged CLECs to perform queries with telephone numbers instead of addresses. See Lacouture/Troy Rep. Decl. ¶¶ 107-108.

¹⁵See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, ¶ 429 (rel. Nov. 5, 1999) (“UNE Remand Order”).

¹⁶Bell Atlantic provides loops to competing DSL providers even where it does not do so for itself. For example, Bell Atlantic does not provide DSL service to customers on loops 15,000

want Bell Atlantic to incorporate numerous other forms of information into a single mechanized database, the simple fact is that Bell Atlantic does not itself use or maintain data in this form.

See id. ¶ 101.

The Department's final concern involves Bell Atlantic's provision of order confirmations for ADSL loops. It claims that in August and September Bell Atlantic confirmed fewer than 60 percent of ADSL orders on time. See DoJ Eval. at 26. But again, the PSC found that "overall" Bell Atlantic provided confirmations in a "timely manner." PSC Eval. at 44. Even for manually qualified loops, Bell Atlantic has managed to reduce response times to 65 hours, below the target. See Lacouture/Troy Rep. Decl. ¶ 87. Bell Atlantic will continue to reduce response times as it adds more offices to the database, thereby reducing the number of orders that have to be qualified manually. See id. ¶ 104.

Flow-Through. The New York PSC's Evaluation concludes that "Bell Atlantic-NY's current flow-through rates are sufficient to handle current volumes," and that "its operations are scalable." PSC Eval. at 47. With respect to current volumes, the Department agrees with this conclusion: "It does not appear that the manual processing is creating serious customer-affecting service problems at current volumes." DoJ Eval. at 32. Indeed, Bell Atlantic currently is completing 99 percent of platform orders on time. See Lacouture/Troy Rep. Decl. ¶ 35. The Department's only concern (and the only flow-through-related concern of most commenters) involves the ability of Bell Atlantic's systems to handle *future* volumes of UNE platforms.

feet or longer or to customers served by DLC systems. See Lacouture/Troy Rep. Decl. ¶ 77. Nonetheless, Bell Atlantic provides competing carriers with loops of more than 15,000 feet, and, where it can locate alternative copper facilities to provide DSL service to a customer on DLC systems, Bell Atlantic makes this alternative available to CLECs as well. See id. ¶ 78.

Here again, the Department's position is based on factual errors. It says it is concerned about Bell Atlantic's ability to handle future volumes because Bell Atlantic is currently flowing through only 50 percent of UNE platform orders. See DoJ Eval. at 31. In fact, the very document cited by the Department shows that 67 percent of platform orders flowed through in August, and the number increased to 71 percent in September. See id. Ex. 9, at 8; see also Miller/Jordan/Zanfini Rep. Decl. ¶ 35. If the flow-through rate is adjusted to remove those orders that do not flow through because of CLEC errors, approximately 80 percent of UNE platform orders flow through. See id. ¶ 36.¹⁷

Of course, the best indicator of future performance is actual experience to date. Actual experience shows that Bell Atlantic has kept pace with rapidly increasing demand for UNE platforms, both by continuously adding to the flow through capabilities of its systems and by increasing its manual processing capabilities as needed. See id. ¶¶ 41-42. For example, the volume of transactions increased six-fold during the first nine months of this year, but Bell Atlantic was able to handle the increase with only modest staffing increases. See id. ¶ 41. And, even at current flow-through levels, Bell Atlantic is completing 99 percent of platform orders on time. See Lacouture/Troy Rep. Decl. ¶ 35.

¹⁷ Bell Atlantic's reported total flow-through measure includes in the denominator orders that fall out for manual processing because of CLEC errors, reducing the reported flow through below what it would be otherwise. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 35-36. The PSC found that approximately 30 percent of the orders that fall out to manual processing do so because of CLEC errors. See PSC Eval. at 46. Even the Department acknowledges that "many" orders are rejected due to CLEC errors, "for which Bell Atlantic should not be held responsible." DoJ Eval. at 30.

Bell Atlantic will also continue to add to its capabilities as needed in the future. See Miller/Jordan/Zanfini Rep. Decl. ¶ 42. Indeed, as MCI WorldCom points out,¹⁸ Bell Atlantic has committed to a schedule with the New York PSC for adding still further flow-through capabilities that should increase the total flow through to more than 80 percent over the coming months (and has already implemented some of those capabilities). See id. And the recently approved Performance Assurance Plan puts \$10 million at risk annually if Bell Atlantic fails to achieve the stringent flow-through objectives set by the PSC. See Petition for Approval of the Amended Performance Assurance Plan and Amended Change Control Assurance Plan for Bell Atlantic-New York, at 4, Cases 97-C-0271 & 99-C-0949 (PSC filed Sept. 24, 1999) (App. I, Tab 24).

Though not raised by the Department, AT&T and MCI WorldCom complain about the inability of Bell Atlantic's systems to flow through certain order types. See AT&T at 18; MCI WorldCom at 13.¹⁹ The Pre-Filing Statement submitted to the New York PSC contains the specific list of order types for which Bell Atlantic was required to implement a flow-through capability based on input from the PSC, the Department, and competing carriers. Contrary to

¹⁸See Ex Parte Letter from Lori Wright, Senior Manager, Regulatory Affairs, MCI WorldCom, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 99-295 (FCC filed Oct. 22, 1999).

¹⁹In addition, AT&T — and only AT&T — complains that the measure of orders that flow through should count orders that are rejected because of CLEC errors and omissions. See AT&T at 17. If rejected orders were included, the story goes, the actual flow-through rate would be lower (about 40 percent), and even below what the Commission found inadequate in the case of BellSouth's application in Louisiana. The short answer is that Bell Atlantic's total flow-through measure was defined in collaboration with CLECs in the New York Carrier-to-Carrier proceeding, and was approved by the PSC. See Dowell/Canny Rep. Decl. ¶ 47. The measure also is consistent with this Commission's definition of flow through. In any event, if, as AT&T suggests, Bell Atlantic were to measure flow through in the same way as BellSouth, its flow-through rate would exceed 80 percent. See Miller/Jordan/Zanfini Rep. Decl. ¶ 36. And, unlike BellSouth in Louisiana, Bell Atlantic in New York already is handling large commercial order volumes at current flow-through rates.

MCI WorldCom's claims, Bell Atlantic has implemented a flow-through capability for *each and every* order type that was covered by its commitment, and more. See Miller/Jordan/Zanfini Rep. Decl. ¶ 29. And KPMG conducted both a functional evaluation and a volume test that confirmed that properly formatted orders of the types that Bell Atlantic committed to have flow through did in fact flow through. See Application at 41-42; PSC Eval. at 45; KPMG Report POP7 IV158-159 (Test Cross-References P7-1 through P7-4) (App. C, Tab 916).²⁰ As the PSC explains, "KPMG found that over 99% of the UNEP and Resale transactions that should have flowed through did in fact flow-through; and that 85.5% and 100% of the UNE-Loop transactions that should have flowed through in the functional evaluation and volume stress test, respectively, did so." PSC Eval. at 45.²¹

Finally, the Department expresses concern that low flow-through rates are adversely affecting the ability to provide timely and accurate order confirmations. See DoJ Eval. at 26.

²⁰Bell Atlantic demonstrates in its Application that, based on the KPMG test scenarios, the vast majority of order types would flow through when submitted by a CLEC if they would flow through on the retail side. See Application at 42 (95 percent of platform orders, 92 percent of other unbundled elements orders, and 89 percent of resale orders). AT&T, however, says that that is not good enough, and wants Bell Atlantic also to provide information on the percentage of retail orders (rather than order types) that flow through. See AT&T at 16. But that misses the point. The fact that most types of CLEC orders are capable of flowing through if they also would flow through on the retail side shows that both have comparable capabilities available to them. Nonetheless, in response to AT&T's claims, Bell Atlantic analyzed its retail orders for the month of October. That analysis showed that only 62 percent of Bell Atlantic's orders flowed through. See Miller/Jordan/Zanfini Rep. Decl. ¶ 39. In any event, the debate itself is somewhat beside the point given that Bell Atlantic has implemented the flow-through capabilities to which it committed, and that it is successfully processing large volumes of orders on time at current flow-through rates.

²¹AT&T (at 21) and MCI WorldCom (at 15-16) claim that the KPMG test is not reliable because it tested only correctly formatted orders. But the KPMG test was meant to test the flow-through capabilities in Bell Atlantic's systems that CLECs specifically requested and helped design with their feedback. The KPMG Report demonstrates that Bell Atlantic properly implemented what it was asked to, and there is no basis to hold Bell Atlantic responsible for CLECs' failure to submit properly formatted orders. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 30-34.

Significantly, however, the Department does not question Bell Atlantic's overall record in providing timely and accurate order confirmations. As the New York PSC has in fact confirmed, Bell Atlantic's "performance in providing confirmations and rejects in a timely and accurate manner enables mass market entry by competitors." PSC Eval. at 44. The PSC specifically stated that Bell Atlantic's "performance in providing LSRCs [confirmation notices] and rejections for manually handled orders is adequate and improving." Id. And the PSC noted that KPMG's test "determined that Bell Atlantic-NY satisfied each of the criteria relating to . . . LSRC response times," and LSRC accuracy. Id.

As demonstrated in the Application, in the first seven months of 1999, Bell Atlantic bettered the intervals set by the New York PSC for returning confirmation notices (LSRCs) and rejection notices for both mechanized orders and orders that require some manual intervention. See Application at 40-41. AT&T, however, says (at 23) that Bell Atlantic's on-time performance for confirmations on platform orders is below the PSC's stringent 95-percent standard, and claims that on-time performance decreased since August. In reality, Bell Atlantic's overall performance on unbundled element orders, the vast preponderance of which are platform orders, remains strong. On average, during both August and September, Bell Atlantic returned confirmations and reject notices for unbundled element orders (including platform orders) on time roughly 94 percent of the time. See Miller/Jordan/Zanfini Rep. Decl. ¶ 43. And, as the PSC expressly found, any subcategories for which Bell Atlantic is not yet meeting the standard have little or no volume of transactions; "[f]or high volume transactions, Bell Atlantic-NY's performance is at or near the targets." PSC Eval. at 43; see Miller/Jordan/Zanfini Rep. Decl. ¶ 43.

AT&T and MCI WorldCom also claim that Bell Atlantic is not providing timely notices on manually processed orders, and AT&T claims that Bell Atlantic commits errors on many of the orders it processes manually. See AT&T at 23; MCI WorldCom at 17-18. As the PSC points out, however, performance is adequate and improving. See PSC Eval. at 43. For example, in August, confirmation notices and rejects on manually processed mass market type orders were delivered on time 88 percent and 83 percent of the time, respectively. As the PSC notes, the 88 percent performance for confirmations on smaller orders is “only slightly below the secondary target” of 90 percent, id., and, “[s]ince only a small portion of the total orders were manually rejected in August,” this resulted in “less than 1% of all orders processed in August . . . receiving late rejection notices,” id. In September, Bell Atlantic improved performance further still, delivering confirmation and rejects on time 92 percent and 91 percent of the time, respectively. See Dowell/Canny Rep. Decl. ¶ 28. Moreover, the recently approved Performance Assurance Plan puts \$24 million at risk annually specifically for manually processed confirmations and rejections to, in the PSC’s words, “ensure that the positive ordering performance trend continues.” PSC Eval. at 43.

In any event, the timeliness of these intermediate ordering notices has not affected Bell Atlantic’s provisioning success. As the missed appointment intervals reported to the PSC show, Bell Atlantic continues to meet its installation dates for CLEC orders at least as often as it does for its own retail customers. See Miller/Jordan/Zanfini Rep. Decl. ¶ 43.

B. Other Checklist and OSS Issues.

There are relatively few disputes about the remaining 12 Checklist items. The Department itself expresses no concerns, even after evaluating virtually all of the arguments that commenters presented in state 271 proceedings and that they now repeat to the Commission. The only allegation that the Department did not get a chance to evaluate is the claim by several

CLECs that Bell Atlantic is not providing interconnection trunks on time. This argument was not raised in the final phase of the state 271 proceedings, and the Department simply advises the Commission to “consider these allegations carefully.” DoJ Eval. at 10-11 n.20.

AT&T and a few other CLECs raise issues with respect to some of the other remaining Checklist items.²² These commenters once again rehash arguments that already have been exhaustively considered and rejected by the New York PSC, and they provide no sound reasons for this Commission to overrule the PSC’s painstaking review.

1. Interconnection.

Interconnection Trunks. The New York PSC has concluded that Bell Atlantic provides interconnection trunking “at any technically feasible point, at least equal in quality to that provided itself, and at reasonable nondiscriminatory rates.” PSC Eval. at 19. It “reviewed [Bell Atlantic’s] performance measurements for key areas related to its trunking performance,” and has found “virtually no failures for July and August 1999.” Id.

As of July 1999, Bell Atlantic had provided CLECs with 349,000 interconnection trunks, which equals more than one-third of the total number of trunks in Bell Atlantic’s entire interoffice network. See Application at 11. Through the end of September, Bell Atlantic has provisioned 378,000 interconnection trunks, including approximately 144,000 interconnection trunks this year alone. See Lacouture/Troy Rep. Decl. ¶¶ 4, 11. On average, these trunks have carried more than 2.5 billion minutes of local traffic each month, see id. ¶ 4, and no CLECs have complained that they have experienced blockage. This proves that competitors have more than

²²The PSC’s Evaluation also confirms that “Bell Atlantic-NY provides unbundled access to its house and riser facilities” under tariff. PSC Eval. at 95. Though RCN attributes problems in obtaining access to house and riser facilities to Bell Atlantic, Bell Atlantic has agreed to allow RCN to provision house and riser cable on its own. See Lacouture/Troy Rep. Decl. ¶¶ 70-72. Moreover, access to in-building house and riser cable is not a Checklist item.

enough spare trunk capacity, and that any anecdotal examples of delays, even if they were true, have not been competitively significant.

And overall there have been very few delays. In the first eight months of 1999, Bell Atlantic met more than 99 percent of its due dates, and provided local interconnection trunks to CLECs even more rapidly than it provided Feature Group D trunks to interexchange carriers. See Application at 12. Bell Atlantic has repeated this outstanding performance in September, putting to rest CLEC claims that Bell Atlantic's performance is inadequate. See Lacouture/Troy Rep. Decl. ¶ 10. Moreover, as described in the Lacouture/Troy Reply Declaration, the claims by a few CLECs that Bell Atlantic has failed to meet specific orders do not show otherwise. Many of the trunk orders complained about were not forecast in accordance with the PSC's procedures, were not submitted correctly by the CLEC, or involve small numbers of trunks that have not affected these carriers' ability to compete. See id. ¶¶ 12-29. And the massive number of trunks that Bell Atlantic has provisioned successfully, and overall on-time performance, show conclusively that this Checklist item is satisfied.

Finally, Bell Atlantic does not improperly require Sprint to establish multiple interconnection points in order to terminate Bell Atlantic's local traffic. See Sprint at 6-7. Bell Atlantic has merely argued in interconnection negotiations with Sprint that, because Sprint offers Bell Atlantic only a single interconnection point, Bell Atlantic is often forced to carry local traffic back and forth across an entire LATA, even though such traffic by definition should require little, if any, transport. See Lacouture/Troy Rep. Decl. ¶¶ 30-33. Bell Atlantic not only does not receive any additional compensation for this transport, but also takes a second hit because it is forced to pay Sprint reciprocal compensation for Internet traffic carried over it — which is of course why Sprint favors this arrangement. To avoid this inequity, Bell Atlantic has

argued that Sprint should be required to offer Bell Atlantic multiple interconnection points, just as Bell Atlantic offers this option to Sprint and other CLECs. In any event, Sprint already has filed a petition for arbitration with the PSC to resolve this issue,²³ and Bell Atlantic will comply with the final decision.

Collocation. The New York PSC has concluded that Bell Atlantic “provides physical and virtual collocation under approved interconnection agreements and tariffs, consistent with FCC and NYPSC orders.” PSC Eval. at 24. The PSC “recently reviewed” Bell Atlantic’s tariff revisions made pursuant to the FCC’s Collocation Order, and has found Bell Atlantic “in compliance” with this order in all respects. Id. And, with respect to Bell Atlantic’s collocation performance, the PSC found that Bell Atlantic “has improved over the past four months”; “passed all PAP measures relating to collocation” in August; and “is currently provisioning collocation in a timely manner.” Id. at 25.

Two major competing carriers, Intermedia and Allegiance, agree wholeheartedly with the PSC’s assessment. Allegiance states that Bell Atlantic’s “improvement in this area [is] commendable.” Allegiance at 9. Intermedia concludes “that Bell Atlantic has effectively addressed the problems that existed with the collocation planning process, effectively eliminating most concerns.” Intermedia at 3.

The numbers bear this out. Competing carriers in New York have a total of 972 collocation sites. See Lacouture/Troy Rep. Decl. ¶ 125. With these completed sites, plus sites in progress, CLECs will have access to central offices serving more than 90 percent of Bell Atlantic’s access lines. See id. In the first seven months of 1999 alone, Bell Atlantic provided

²³See Petition of Sprint Communications Company L.P., Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Bell Atlantic-New York, Case 99-C-1389 (NYPSC filed Oct. 11, 1999).

more than 500 collocation arrangements, with on-time performance from May through July approaching 100 percent. See Application at 13-14. And, although some commenters claim that Bell Atlantic's practices impede collocation, there has been an increase, not a slow down, in the completion of new collocation arrangements. In August and September, Bell Atlantic provided an additional 196 collocation sites, met virtually all of its due dates, and has had no backlog of collocation requests. See Lacouture/Troy Rep. Decl. ¶¶ 125-126.

With just one exception,²⁴ the only complaints about collocation involve legal disputes about provisions in Bell Atlantic's tariff, such as its provisioning intervals, prices, equipment authorization requirements, and security procedures.²⁵ But the PSC has explicitly reviewed these challenged provisions and found them to be fully consistent with the requirements of the 1996 Act, the FCC's rules, and the PSC's own rules.²⁶ Moreover, as detailed in the Lacouture/Troy Reply Declaration, most of the allegations are misplaced to begin with. See id. ¶¶ 132-142.

²⁴The only allegation that does not involve interpretation of Bell Atlantic's collocation tariff is that, even after Bell Atlantic turns over a collocation cage, a CLEC must wait for Bell Atlantic to assign a special billing number and provide carrier facility assignment information. See NAS at 12. But, as the PSC notes, Bell Atlantic already has "addressed the issues of the delayed service billing numbers and carrier facility assignments." PSC Eval. at 25. Bell Atlantic proactively provides service billing numbers to every data CLEC like NAS, whether or not they are requested. See Lacouture/Troy Rep. Decl. ¶¶ 129-131.

²⁵NAS (at 10-11) also complains that Bell Atlantic does not attribute the costs of collocation to its provision of advanced services. Bell Atlantic's advanced services tariff, which has been reviewed and permitted to take effect, was supported by cost studies that apportion to these services the cost of the real estate in the central office used to house Bell Atlantic's advanced services equipment.

²⁶See Cases 99-C-0715 & 95-C-0657, PSC, Order Directing Tariff Revisions, Aug. 31, 1999 (App. I, Tab 19).

2. Unbundled Network Elements.

Performance Intervals. Only AT&T disputes that Bell Atlantic is providing unbundled elements on time. See AT&T at 24-25.²⁷ AT&T alleges in particular that the Gertner/Bamberger study does not support Bell Atlantic's claim. AT&T is simply wrong. In fact, AT&T concedes (as it must, and as MCI WorldCom has done as well) that the central finding of the Gertner/Bamberger analysis — that installation intervals are often longer for UNE orders than for retail orders because CLECs are asking for longer intervals — is correct. See id. at 19 ("it is undisputed that the intervals competing carriers such as AT&T request are often up to two-and-one-half times longer than the intervals to which they are entitled"); Application at 16-17 (noting MCI WorldCom's similar acknowledgment). Moreover, the PSC, which "examined every detail of Bell Atlantic-NY's wholesale service to CLECs," found that "wholesale service competitors are receiving is non-discriminatory." PSC Eval. at 3, 8.²⁸

AT&T nevertheless argues that Bell Atlantic should be blamed for the fact that CLECs request longer intervals. AT&T claims that CLECs request longer intervals only because they lack confidence in Bell Atlantic's ability to meet the standard intervals. See AT&T at 19. But, as the Gertner/Bamberger study demonstrates, Bell Atlantic has met standard intervals when

²⁷MCI WorldCom (at 16-17) and ChoiceOne (at 11) attempt to diminish Bell Atlantic's claim that MCI WorldCom — which accounts for the vast majority of recent UNE orders — has consistently delivered orders to Bell Atlantic in large batches, even though it is likely that MCI WorldCom actually receives orders from its customers fairly uniformly throughout the week. But neither CLEC disputes that Bell Atlantic is receiving orders in batches, nor could they. The fact is that receipt of large batches of orders during the published off-line hours Bell Atlantic reserves for system maintenance necessarily affects the time within which those orders can be processed and returned. See Miller/Jordan/Zanfini Rep. Decl. ¶ 49. Despite the fact that order volumes have been volatile, however, Bell Atlantic has met the due dates for orders and notices. See id.

²⁸Contrary to AT&T's claim (at 24-25), there also is substantial evidence in the record that the service order mix of CLECs is different from that of Bell Atlantic. See Gertner/Bamberger Rep. Decl. ¶¶ 5-6; Dowell/Canny Reply Decl. ¶ 52.

CLECs request them, which is completely inconsistent with AT&T's claim that Bell Atlantic's actual performance has caused CLECs to request longer intervals. See Gertner/Bamberger Rep. Decl. ¶ 4. Moreover, at least with respect to non-dispatch orders, AT&T's claim is simply illogical: for these orders, it is in AT&T's interest to request standard intervals from Bell Atlantic, but to tell its customers that installation may take a little longer. This way, if Bell Atlantic delivers on time, AT&T can take the credit with its customers for getting the service working quickly; and, if Bell Atlantic delivers late, AT&T's customers will simply think they have received service on time. In contrast, asking Bell Atlantic for a longer interval would merely risk having the order delayed further still if AT&T's claims about Bell Atlantic's performance are to be credited at all.

Unbundled Local Transport. The New York PSC's Evaluation confirms that "Bell Atlantic-NY is currently provisioning unbundled transport orders at parity" and that, in August, Bell Atlantic's on-time completion rate for CLECs was higher than for its own retail orders. PSC Eval. at 103. Indeed, Bell Atlantic's Application demonstrates that it is providing massive quantities of unbundled shared local transport as part of platforms, as well as significant quantities of dedicated transport, and that it has completed these orders on time. See Application at 21-22. In September, Bell Atlantic provided 53,000 additional unbundled transport facilities as part of platforms, and provided 99 percent of these orders on time. See Lacouture/Troy Rep. Decl. ¶ 35.

A few CLECs complain here about orders they submitted to Bell Atlantic to purchase special access services directly from its special access tariffs; however, special access service is not part of the Competitive Checklist and therefore not relevant to this proceeding. In any event, these complaints involve a very small volume of special access circuits that is tiny in comparison

to the amount of unbundled transport facilities Bell Atlantic provides, and that in no way detracts from Bell Atlantic's overall excellent performance.

Unbundled Local Switching. The PSC has concluded that Bell Atlantic provides unbundled switching in accordance with the Checklist. See PSC Eval. at 109-10. In September, Bell Atlantic provided 53,000 additional unbundled switching facilities as part of platforms. See Lacouture/Troy Rep. Decl. ¶ 35.

Only one carrier raises any issue with respect to unbundled switching. Z-Tel claims that Bell Atlantic is using the Network Design Request ("NDR") process that allows CLECs to establish their dialing plans to delay Z-Tel's entry. See Z-Tel at 9-12. As the PSC notes, however, KPMG confirmed that Bell Atlantic has implemented procedures "to ensure correct provisioning of services through the NDR process." PSC Eval. at 108. The PSC itself concluded that Bell Atlantic's procedures "ha[ve] improved the provisioning process and NYDPS Staff is satisfied that this testing is adequate." Id. at 110. Moreover, Z-Tel and other CLECs have the option of choosing a generic NDR instead of a customized NDR — Option B — which "allows access to unbundled switching in a much shorter interval." Id.²⁹

Network Element Combinations. A few commenters assert that the terms on which Bell Atlantic provides combination of elements do not pass muster. As an initial matter, to the extent the Department of Justice and others suggest there currently is any limitation on Bell Atlantic's platform offering in New York, they again have their facts wrong. Although certain common-

²⁹Z-Tel is simply wrong that Bell Atlantic refused to begin a customized NDR process with Z-Tel until five months after Z-Tel made its request (i.e., until February 2000). Z-Tel fails to mention that Bell Atlantic actually began this process with Z-Tel on September 17, 1999. At a meeting on that date, Z-Tel asked for the impossible — a customized NDR delivered immediately. As Z-Tel notes, Bell Atlantic offered a compromise: a generic NDR until Bell Atlantic could implement the customized NDR, followed by conversion from the generic to the

sense limitations have been approved by the PSC, they have not taken effect. In any event, after the Supreme Court vacated Rule 319,³⁰ Bell Atlantic was under no legal obligation to offer combinations.³¹ Nevertheless, Bell Atlantic has voluntarily provided combinations, including both the platform and so-called enhanced extended links (or “EELs”) and any limitations approved by the PSC are consistent with the statutory “necessary and impair” standard.³² Although this Commission recently promulgated new rules implementing that standard (as well as a further rulemaking to determine whether EELs can be used to displace already competitive special access offerings), those rules have not yet taken effect.³³ When they do, Bell Atlantic will comply with them fully, in the absence of an administrative or judicial order suspending, modifying, or invalidating the rules. See Application at 25.

customized. Z-Tel simply chose not to pursue option, and is now pursuing Option B with Bell Atlantic. See Lacouture/Troy Rep. Decl. ¶ 175.

³⁰47 C.F.R. § 51.319 (listing the network elements ILECs must unbundle).

³¹See, e.g., Case 98-C-0690, PSC, Order Denying Rehearing and Clarifying Primarily Local Traffic Standard, at 9-10, Aug. 10, 1999 (App. D, Tab 203) (“Pending completion of the FCC’s determination of which individual network elements meet a more strictly applied necessary and impair standard, federal law does not mandate access to the EEL.”).

³²See Cases 98-C-0690 & 95-C-0657, Opinion No. 98-18, PSC, Opinion and Order Concerning Methods for Network Element Recombination, at 2-3, Nov. 23, 1998 (App. D, Tab 121); Case 98-C-0690, PSC, Order Suspending Tariffing Amendments and Directing Revisions, at 5-7, Jan. 11, 1999 (App. D, Tab 129); Case 98-C-0690, PSC, Order Directing Tariff Revisions, at 7-9, Mar. 24, 1999 (App. D, Tab 156); Case 98-C-0690, PSC, Order Denying Rehearing and Clarifying Primarily Local Traffic Standard, at 8-11, Aug. 10, 1999 (App. D, Tab 203); see also App. H, Tab 3, §§ 5.12.2.2, 5.12.3, 5.12.8.5, 5.14.2.12.

³³See UNE Remand Order ¶ 526.

CompTel argues that the so-called “complete when filed” rule required Bell Atlantic to explain in its Application how it will comply with the new rules when they become effective.³⁴ This is nonsense. For one thing, if CompTel were correct, section 271 applications could almost never be granted: scarcely a 90-day period elapses in which no major regulatory event occurs. For another thing, many of the new rules will not have gone into effect even by year end. Finally, the law is clear that a “complete when filed” rule may not be applied with respect to requirements that were not yet released at the time of filing.³⁵

3. Number Portability.

The PSC’s Evaluation concludes that Bell Atlantic “has shown that it is in compliance with this Checklist item,” and that “there have been no recent allegations that Bell Atlantic-NY fails to meet its obligations regarding this Checklist item.” PSC Eval. at 136. RCN nevertheless complains that in the last few months Bell Atlantic has refused to allow customers to switch from RCN to Bell Atlantic and does not permit these customers to keep their RCN-issued number. See RCN at 10-11. Apart from being bizarre (Bell Atlantic has a strong incentive to make it easy for customers to switch *to* Bell Atlantic), RCN’s claim is plainly wrong. Bell Atlantic has already accepted 9,000 ported numbers from CLECs. See Lacouture/Troy Rep. Decl. ¶ 118.

4. Reciprocal Compensation.

The PSC found that Bell Atlantic is complying with all of its interconnection agreements, and is making its reciprocal compensation payments. See PSC Eval. at 145. Global NAPs

³⁴See CompTel at 10-16; cf. C&W at 10-11.

³⁵See, e.g., McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993); Salzer v. FCC, 778 F.2d 869, 871 (D.C. Cir. 1985); Applications of Jeffrey Scott, Hearing Designation Order, 7 FCC Rcd 3041, ¶¶ 2-4 (MMB, Chief, Audio Servs. Div. 1992); Applications for Review and Petitions for Reconsideration of the Return of Rural Service Area Cellular Applications for Having Defective Maps, Memorandum Opinion and Order, 6 FCC Rcd

complains that Bell Atlantic is violating the PSC's August 1999 Order setting reciprocal compensation rates for Internet traffic. But Global NAPs concedes (as it must) that it received payment in early October and those payments were at the rate levels set by the PSC. See Global NAPs at 4; see also Lacouture/Troy Rep. Decl. ¶¶ 122-124. And, to the extent that Global NAPs complains about the legal positions Bell Atlantic has taken in interconnection negotiations and litigation, it is perfectly clear that Bell Atlantic is entitled to defend its legal rights based on the plain language of the contract to which GNAPs agreed. See id.

5. Resale.

The PSC has found that Bell Atlantic is satisfying its obligations to resell its retail services. See PSC Eval. at 150-51. As of September 1999, Bell Atlantic had provided 319,000 resold lines to more than 65 competing carriers. See Lacouture/Troy Rep. Decl. ¶ 159. Bell Atlantic consistently has delivered resale services on time, and KPMG has verified Bell Atlantic's ability to provide resold lines in volumes that far exceed the levels it is providing today. See KPMG Report POP6 IV138-149 & App. C (App. C, Tab 916).

A few commenters complain about Bell Atlantic's termination liabilities on long-term resale contracts.³⁶ But these termination liabilities are pro-competitive, as they preserve the incentives necessary for Bell Atlantic to keep offering services to customers at low rates, and enable customers to switch carriers without the usual consequences involved in breaking a freely negotiated contract. See Lacouture/Troy Rep. Decl. ¶ 163. Moreover, most of the contracts about which commenters complain involve Centrex service, where the termination liabilities merely require customers to make up the difference between the longer-term rate that they

5378, ¶¶ 5-6, 10 (1991); Application of Metacomm Cellular Partners, Order on Reconsideration, 4 FCC Rcd 4452, ¶¶ 5-12 (CCB, Chief 1989).

³⁶See e.spire/Net2000 at 3-10; ALTS at 64-67; TRA at 23-27.

actually received and the shorter-term rate they would have received had the contract been negotiated for the shorter-term duration it actually was because of the customer's desire to break the contract and switch to a competitor. See id. ¶ 166. The Commission previously has recognized that these types of reasonable termination liabilities are both permissible and pro-competitive.³⁷ Moreover, the commenters offer no tangible proof that termination liabilities have actually impeded customers from switching carriers; indeed, CLECs have continued to win CSAs despite these termination liabilities. See Lacouture/Troy Rep. Decl. ¶ 167.

TRA also complains that Bell Atlantic is not providing an avoided-cost discount on its *wholesale* ADSL offering. See TRA at 27-28. As its name implies, however, Bell Atlantic's wholesale ADSL offering is not a retail service, and therefore is not subject to section 251(c)(4)'s requirement to provide retail services at an avoided cost discount. Indeed, for that very reason, the Commission recently held that those services are not subject to a further wholesale discount.³⁸

6. Operations Support Systems.

Based upon its own exhaustive two and one-half year review and the results of the 15-month-long test conducted under its supervision by independent auditor KPMG, the New York PSC has confirmed emphatically that Bell Atlantic's "OSS provides the functions required by §271," that Bell Atlantic "is providing access to OSS in compliance with Checklist item (ii),"

³⁷See South Carolina Order ¶ 222; Expanded Interconnection with Local Telephone Company Facilities, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341, ¶ 41 (1993) (concluding that similar termination liability provisions "reasonably balance the interests of both the LECs and their customers").

³⁸See FCC, News Release, FCC Adopts Rules Applicable to the Sale of High-Speed Internet Services, Nov. 2, 1999. Similarly, the Act does not — as ALEC (at 2) claims — require Bell Atlantic to offer for resale a flat-rate local service option in New York City. Bell Atlantic does not have its own retail flat-rate local service offering in New York City, and therefore is not required under section 251(c)(4) to provide one at wholesale for CLECs.

and that Bell Atlantic “passed all critical [OSS-related] metrics.” PSC Eval. at 2, 6, 7. In fact, the PSC confirmed that Bell Atlantic’s systems and processes not only are capable of handling current commercial volumes, but also can handle expected future demand. According to the PSC, the KPMG test of Bell Atlantic’s “OSS interfaces, documentation, and processes . . . demonstrates Bell Atlantic-NY’s ability to handle a broad array of resale, unbundled network elements, unbundled network element platform and combination orders *at reasonably foreseeable volumes* in a nondiscriminatory manner.” *Id.* at 34 (emphasis added). The Department commends the “unprecedented scale” of OSS testing in New York, which it notes has “had a substantial and valuable market-opening effect.” DoJ Eval. at 4, 5.

Pre-Ordering Interface. The New York PSC has confirmed that, “[i]n light of the results of the KPMG evaluation, and the reported results, . . . Bell Atlantic-NY is providing access to appropriate pre-order functionality, adequate response times and satisfactory interface availability.” PSC Eval. at 41. It also confirmed that Bell Atlantic “has met the requirement that it provide fully integratable pre-ordering and ordering interfaces.” *Id.* at 48.

Indeed, as demonstrated in the Application, Bell Atlantic currently has two electronic pre-ordering interfaces that are in place and fully operational: EDI-9, an integratable application-to-application interface that three CLECs are using; and the Web-GUI, which more than 100 CLECs are using. See Application at 37-38. As of July, these interfaces were handling more than 200,000 pre-order transactions a month, see id. at 38, and have handled an additional 283,000 pre-order transactions in September alone, see Miller/Jordan/Zanfini Rep. Decl. ¶ 5. And the KPMG test demonstrated that the interfaces are capable of handling even greater volumes. See Application at 38; PSC Eval. at 37.

Despite all this, AT&T and MCI WorldCom claim that these pre-ordering interfaces are deficient. The Department also expresses some concern about the documentation needed to develop these interfaces. These claims, however, rely largely on the fact that AT&T and MCI WorldCom themselves have not yet finished their own interfaces, despite their opportunity and ability to do so.³⁹ KPMG and other CLECs *have* successfully built their own side of the pre-ordering interface using Bell Atlantic's documentation. As the New York PSC confirms, the experience of those entities shows conclusively that Bell Atlantic's systems pass muster. See PSC Eval. at 7, 34.

MCI WorldCom, however, tries to discredit the New York PSC and KPMG by claiming that KPMG was given preferential treatment, and that the interface it ultimately built was somehow inferior to one a CLEC would build. See MCI WorldCom at 29. This is just not so. The reality is that the New York PSC closely supervised the design and conduct of the test to ensure that KPMG did not receive preferential treatment and that the test was comprehensive. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 6-7, 20. As the PSC states, KPMG's evaluation "included transaction-driven testing that was designed to have the third-party 'live the CLEC experience.'" PSC Eval. at 34. The test "thoroughly evaluated the EDI Pre-order interface, covering a 'broad range of options available to CLECs and resellers.'" Id. at 37 (quoting KPMG Report III-3).

³⁹In fact, AT&T's claims (at 26) primarily relate to a completely different interface (known as CORBA) that AT&T alone asked Bell Atlantic to develop in addition to its existing EDI interface. There is, however, no requirement to provide multiple application-to-application interfaces. In any event, Bell Atlantic has met every one of its milestones (although AT&T has not) to deploy and test this interface on a schedule set by the PSC. See Miller/Jordan/Zanfini Rep. Decl. ¶ 23.

Bell Atlantic's EDI-9 interface also includes all the necessary pre-ordering functions. As the New York PSC explains, the KPMG test of the EDI interface included both a "functional evaluation" to determine whether all the appropriate functions were available, and a volume test to evaluate the performance of the interface. Id. Based on this evaluation, "KPMG found that Bell Atlantic-NY's system provides required pre-order functionality," id. at 38, including an address validation function (which MCI WorldCom now inexplicably claims is lacking, see MCI WorldCom at 30-31). And KPMG found that, at end-of-year normal-day volumes (which under the circumstances of the test were really "peak" volumes), response times were well within expected time frames. See PSC Eval. at 40. Likewise, the response times for actual commercial pre-ordering transactions generally "have all been within th[e] parity-plus-four-second range" adopted as a standard in the New York Carrier-to-Carrier proceeding. Id. at 39.

MCI WorldCom's only other comment on the functionality of the pre-ordering interface is to note that the interface it uses to obtain so-called "parsed" CSRs is unstable, does not cover all product and service orders, and does not return responses in competitive time frames. See MCI WorldCom at 28-29. It is careful, however, not to attribute the cause of the problem to Bell Atlantic. Nor can it. In reality, the ability to obtain access to parsed CSRs is a capability that was added only recently at MCI WorldCom's request (in advance of an industry standard) and that the companies are working cooperatively to implement. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 18-22. As a result of these cooperative efforts, the average response times for parsed CSRs are now well within the retail-plus-10-seconds standard established by the PSC. See id. ¶ 21.

Finally, AT&T alone complains that Bell Atlantic has not provided integratable pre-ordering and ordering interfaces. See AT&T at 25-26. Once again, it is simply wrong. The New York PSC expressly found that Bell Atlantic “has met the requirement that it provide fully integratable pre-ordering and ordering interfaces.” PSC Eval. at 48. Indeed, “KPMG and several CLECs have been able to successfully integrate their pre-ordering and ordering interfaces.” Id. For example, CTC “uses its own system to bridge to two OSS interfaces,” and “[a]nother CLEC obtains pre-ordering information via EDI-9 and populates EDI-8 LSRs.” Id. And, while AT&T’s real complaint appears to be that it has not yet fully integrated its separate CORBA pre-ordering interface with the EDI ordering interface, even AT&T itself, according to the PSC, has been able to obtain “pre-ordering data via CORBA to populate EDI-8 LSRs.” Id.

Jeopardy Notifications. As the New York PSC states, “KPMG determined that Bell Atlantic-NY satisfied each of the criteria relating to order functionality.” Id. at 44. The PSC reached a similar conclusion. See id. Nevertheless, some commenters claim that Bell Atlantic’s ordering systems do not provide required functionality. In particular, some CLECs challenge the adequacy of Bell Atlantic’s jeopardy notification system, either because it requires CLECs to check a website for jeopardy notices, or because it supposedly provides notices only when Bell Atlantic has already missed a due date. See, e.g., AT&T at 22; NorthPoint at 16-17.⁴⁰ But the jeopardy notification process to which they now object is precisely what the CLECs agreed to in the collaborative proceedings in New York. See Miller/Jordan/Zanfini Rep. Decl. ¶ 50. Likewise, contrary to their current claims, the jeopardy notices do provide CLECs with precisely

⁴⁰ AT&T (at 22) also argues that Bell Atlantic has not provided fielded complex completion notifications, which would allow CLECs to determine electronically whether an order was provisioned correctly. This is yet another example of AT&T’s overreaching. Consistent with the checklist, Bell Atlantic already provides confirmation notices that are both timely and accurate. See Miller/Jordan/Zanfini Rep. Decl. ¶ 43.

the advance notice that they agreed they wanted. Specifically, if a technician concludes during the course of a day that he or she will not be able to complete an order that is scheduled for that day, that information is included in the jeopardy notices that are posted on the website. See id. That way, the CLEC knows that the order will not be completed on the due date.

Maintenance and Repair. The New York PSC concludes that, “[b]ased on KPMG’s review and evaluation and our evaluation of Bell Atlantic-NY’s maintenance and repair performance, we find that CLECs have nondiscriminatory access to Bell Atlantic-NY’s maintenance and repair systems.” PSC Eval. at 53. Indeed, Bell Atlantic’s existing interfaces process more than 40,000 maintenance transactions per month from CLECs, and KPMG’s test demonstrated that Bell Atlantic can handle significantly greater volumes — approximately 500 transactions per hour (4,000 in an eight-hour day). See Application at 45.

AT&T, of course, argues to the contrary. It first claims that Bell Atlantic has not offered an application-to-application interface. See AT&T at 26-27. That is simply false. Bell Atlantic has offered an application-to-application interface for maintenance and repair (known as EIF), but AT&T chose not to use it. See Miller/Jordan/Zanfini Rep. Decl. ¶ 56. Bell Atlantic also is currently deploying a *second* application-to-application interface that employs electronic bonding, even though industry standards for local exchange services are incomplete. See PSC Eval. at 36. In any event, even AT&T concedes that the Commission previously held that an application-to-application interface is not necessary to comply with the Checklist. See AT&T at 26.

AT&T also is simply wrong that KPMG found that Bell Atlantic’s RETAS maintenance-and-repair system accessible through the Web GUI does not provide CLECs with the required functionality. See id. at 26-27. As the PSC states, “[o]verall, KPMG evaluated 192 criteria in

M&R and found all of them to be satisfied or satisfied with qualifications. It found that the RETAS system provided the CLECs adequate performance.” PSC Eval. at 51. Although it is true that KPMG initially noted an exception, Bell Atlantic modified its processes and KPMG examined these fixes and closed the related exception. See Miller/Jordan/Zanfini Rep. Decl. ¶ 58. For example, KPMG found that Bell Atlantic improved its trouble-ticket process, and made improvements to its instructions for operating the RETAS system. See PSC Eval. at 51.⁴¹

Billing. Bell Atlantic provides CLECs with timely and accurate billing information “well above the standards” set by the PSC. See id. at 54. KPMG thoroughly tested Bell Atlantic’s billing systems, and found them satisfactory. See KPMG Report Executive Summary II9-10 (App. C, Tab 916); PSC Eval. at 53-54. The New York PSC’s evaluation concludes that, “[b]ased on KPMG’s analysis, and in light of the performance data, we find that Bell Atlantic-NY provides access to its billing in a nondiscriminatory manner.” PSC Eval. at 54.

Resurrecting claims it made before the PSC, AT&T complains that Bell Atlantic provides inaccurate and incomplete usage data. See AT&T at 27. But, as the PSC notes, when KPMG reviewed Bell Atlantic’s billing data, it found that “Bell Atlantic-NY’s bills were consistent with Bell Atlantic-NY’s relative inexperience in providing wholesale billing” and that “the status of Bell Atlantic-NY’s billing abilities would have no material adverse affect on the CLECs’ ability to do business.” PSC Eval. at 54.⁴² Even AT&T acknowledges that Bell Atlantic has resolved

⁴¹Covad (at 31-32) alleges that Bell Atlantic’s provisioning center refuses to open trouble tickets within 24 hours of a due date. This is not true. Bell Atlantic has implemented a function in RETAS that gives CLECs the ability to enter a trouble ticket immediately after completion of a service order. As a result, CLECs can now enter a trouble ticket electronically sooner than Bell Atlantic retail representatives can. KPMG has tested this new function and confirmed that it resolves its concerns. See KPMG Report M&R5 V72-73 (Test Cross Reference M5-1) (App. C, Tab 916); Miller/Jordan/Zanfini Rep. Decl. ¶ 59.

⁴²CoreComm alleged in its comments that it did not receive bills on a timely basis, within 10 business days. CoreComm subsequently withdrew this claim after realizing that

the problems that were the source of its complaints and that it is now receiving accurate and timely usage data. See Crafton/Connolly Aff. ¶ 186; Miller/Jordan/Zanfini Rep. Decl. ¶¶ 61-65.

Change Management. As described in the Application, Bell Atlantic provides CLECs with extensive documentation and technical support to use Bell Atlantic's OSS interfaces. Application at 47. Bell Atlantic also has instituted a comprehensive Change Management Process to ensure that competitors have no problems with future OSS releases. See id. The PSC's Evaluation concludes that "Bell Atlantic-NY has in place appropriate processes for establishing and maintaining Bell Atlantic-NY/CLEC relationships." PSC Eval. at 64.

AT&T, MCI WorldCom, and Sprint charge that Bell Atlantic has not adopted adequate change-management procedures. These claims rely heavily on an outdated discussion of KPMG's findings, which have largely been superseded by improvements to Bell Atlantic's systems that Bell Atlantic already has made or has committed to make. The PSC's evaluation concludes that, based on KPMG's review, certain clarifications regarding RETAS documentation, and Bell Atlantic's agreement to have its commitments enforced through the Change Control Assurance Plan, "Bell Atlantic-NY delivers change control notice and documentation in a timely manner." Id. at 57.

AT&T and MCI WorldCom claim that Bell Atlantic's documentation has been full of errors, omissions, and inconsistencies, and that KPMG found Bell Atlantic's documentation faulty. See AT&T at 28-29; MCI WorldCom at 21-22. Contrary to these allegations, however, KPMG's Final Report did not find fault with the substance of Bell Atlantic's documentation. To the contrary, it found that "process responsibilities were clearly defined"; that "essential

CoreComm's billing agent, not Bell Atlantic, was at fault. See Ex Parte Letter from James L. Casserly to Magalie Roman Salas, Secretary, FCC, CC Docket No. 99-295 (FCC filed Nov. 3, 1999).

elements were in place and adequately documented”; and that “criteria for prioritization and severity coding were defined.” PSC Eval. at 55-56.

Contrary to MCI WorldCom’s claims, Bell Atlantic also has cured problems with the timeliness with which Bell Atlantic provides notice of changes. The PSC has concluded that “Bell Atlantic-NY delivers change control notice and documentation in a timely manner.” Id. at 57. Furthermore, Bell Atlantic has committed to subject its documentation intervals to steep penalties under the Change Control Assurance Plan.

AT&T and Sprint next complain that Bell Atlantic has tried to evade its notice requirements by using “Flash Announcements” to notify CLECs of changes in Bell Atlantic’s business rules, instead of following standard advance notice requirements in the Change Control Assurance Plan. See AT&T at 28; Sprint at 20.⁴³ But these claims seriously misrepresent the extent to which Bell Atlantic has relied on Flash Announcements as opposed to providing more advance notice. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 71-74. For example, although AT&T claims that every change Bell Atlantic has made since August 31 has been through a Flash announcement, in fact only one of the ten changes that Bell Atlantic made in October was notified in this way. See id. ¶ 73. Moreover, Bell Atlantic has already worked with CLECs to create a revised notification process; this process underwent testing with CLECs, and was modified to address concerns raised in this testing. See id. ¶¶ 69-70.

⁴³Sprint also criticizes Bell Atlantic for changing its policies and procedures too often, and for not supporting backward-compatible versions of the same interfaces. See Sprint at 18-19. In many cases, Bell Atlantic has effected changes because national standards have changed. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 89-90. Bell Atlantic is forced to accommodate the requests of multiple CLECs, not just Sprint, and many CLECs have asked for the very changes about which Sprint complains. See id. For example, although Sprint was unhappy that Bell Atlantic skipped over Local Service Ordering Guidelines (“LSOG”) Version 3 and went straight to LSOG Version 4, this was done as the result of a general consensus reached by CLECs in the Change Management process. See id. ¶ 83.

Finally, Sprint and MCI WorldCom allege that Bell Atlantic does not adequately accommodate CLEC requests that Bell Atlantic change its systems. See Sprint at 21; MCI WorldCom at 22-23. In fact, over the past two years Bell Atlantic has implemented numerous software capabilities to support CLEC access to OSS functions. See Miller/Jordan/Zanfini Rep. Decl. ¶ 82. Although many of these enhancements were not made at the direct request of CLECs, they were made at the insistence of the PSC and KPMG, both of which were extremely aware of CLEC concerns. See id. Bell Atlantic obviously cannot accommodate each and every CLEC request, so it recently has established a prioritization process for CLEC requests under which the highest priority projects will be performed first. See id. ¶ 83. In the initial priority-setting workshops, the majority of projects that CLECs agreed should have top priority were not CLEC-initiated projects. See id.

Testing. AT&T and MCI WorldCom criticize Bell Atlantic's environment for carrier-to-carrier interface testing. See AT&T at 28 n.4; MCI WorldCom at 24-25. At the time of the KPMG test, Bell Atlantic had not yet implemented its new permanent test environment, but, as the PSC notes, KPMG nevertheless "did validate and verify the adequacy of the interim test environment and the general approach of Bell Atlantic-NY's permanent solution." PSC Eval. at 59. KPMG "determined that a consistent framework for testing had been established." Id. at 60.

Bell Atlantic now has implemented its new permanent testing environment on schedule, and it has been a success. See Miller/Jordan/Zanfini Rep. Decl. ¶ 93. Four CLECs have participated in testing for the October release; they tested a wide range of scenarios and demonstrated that the new environment was available for complete testing in the required timeframe. See id. ¶ 94.

MCI WorldCom's claim that Bell Atlantic's new testing environment is unproven is simply misplaced. KPMG did sign off on the blueprints for Bell Atlantic's new testing environment. Furthermore, as the PSC notes, although "CLECs experienced some difficulties during the May and June new release testing, it appears that those problems were in substantial part due to *their* lack of familiarity with the newly established testing procedures." PSC Eval. at 60 (emphasis added). But those procedures no longer are new, and CLECs have had ample opportunity to become familiar with them. And, in any event, even though Bell Atlantic's permanent testing environment is new, it is in all material respects identical to the interim environment with which CLECs have had every opportunity to familiarize themselves. See Miller/Jordan/Zanfini Rep. Decl. ¶¶ 92-93.

II. BELL ATLANTIC IS FULLY IN COMPLIANCE WITH SECTION 272.

In its Application, Bell Atlantic established that it fully complies with all safeguards contained in section 272. See Application at 49-55.⁴⁴ The vast majority of comments does not even address this part of Bell Atlantic's showing, thereby implicitly conceding that it passes muster. And MCI WorldCom (at 8 n.11) expressly acknowledges that Bell Atlantic complies with section 272.⁴⁵ Only AT&T devotes considerable argument to section 272 issues. Each of its arguments, however, is entirely meritless.

⁴⁴As explained in the Application (at 49 n.43), the services that will be provided through section 272 affiliates generally include interLATA services originating in New York. Private line and 800 services, however, are subject to the requirements of sections 271 and 272 on the terminating (rather than originating) end. See 47 U.S.C. § 271(j). No party suggests otherwise.

⁴⁵Even some of Bell Atlantic's opponents that do address section 272 issues cannot bring themselves to say that Bell Atlantic's showing is insufficient. See ALTS at 72 (arguing only that "the Commission must . . . be diligent in monitoring Bell Atlantic's section 272 compliance").